

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE - W/S Westchester Avenue, 410' S of Oella Avenue (104 Westchester Avenue) 1st Election District 1st Councilmanic District

* BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY

Case No. 93-213-SPHA

John F. Moore
Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing and a Petition for Zoning Variance filed by the owner of the subject property, John F. Moore. The Petitioner requests a determination that three building lots are permitted within an area where a density anomaly exists and variance relief from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot widths at the front building line of 88 feet and 95 feet in lieu of the required 100 feet each for Proposed Lots 1 and 2, all as more particularly described on Petitioner's Exhibit 1.

Appearing on behalf of the Petitions were John F. Moore, property owner, and Thomas A. Church, Professional Engineer. Appearing as Protestants in the matter were Henry Debaugh, nearby resident of the area and President of the Greater Oella Community Association, and R. Kent Adams, also a resident of the area.

At the onset of the hearing, the Petitioner withdrew his request for a variance of 95 feet for Proposed Lot 2, which is actually 104.85 feet in width. Therefore, the variance requested for that lot is not necessary and the same shall be dismissed pursuant to this Order.

Testimony indicated that the subject property, known as 2409 Westchester Avenue, contains a gross area of 3.10 acres, more or less,

split zoned D.R.1 and D.R. 2. The D.R. 1 zoned portion of the site contains 2.22 acres and the D.R. 2 zoned portion of the site contains 0.88 acres and is improved with a two-story dwelling. The Petitioner proposes to subdivide the subject property into three lots in accordance with that shown on Petitioner's Exhibit 1. Proposed lot 1 would contain the existing improvements and Lots 2 and 3 are proposed for development with a single family dwelling on each lot.

Appearing and testifying in opposition to the relief requested were two local residents of the area, Henry Debaugh and R. Kent Adams. The Protestants testified that the community worked very hard through the last zoning cycle to down-zone the entire area in which the Petitioner's property is located. That down-zoning request was approved by the County Council in October 1992. The Protestants argue that pursuant to the new zoning which governs the subject property, the Petitioner is not permitted to have two lots on the D.R. 2 zoned portion of the site as proposed, due to its insufficient lot area to support two density units. The Protestants are opposed to development of the subject property in the manner specified on Petitioner's Exhibit 1.

The special hearing requested by the Petitioner calls into question County Council Bill No. 2-92 which took effect on March 2, 1992. In essence, said Bill dictates that residential density must be calculated strictly in accordance with the D.R. zone in which a particular parcel of land is located. It specifically held that low density zoned land, such as D.R. 1 and D.R. 2 as in the instant matter, can no longer have their density mixed, or clustered, in order to permit more density than that which would normally be associated with that parcel of property. Simply stated, the D.R. 2 zoned portion of the site must have sufficient acreage

to support the two density units proposed therein. When looking at the plan in this particular case, the Petitioner is only afforded 0.88 acres of land in the D.R. 2 zoned portion of his property. That amount of acreage cannot support the two dwelling units proposed on the Petitioner's site plan. Therefore, pursuant to the new legislation, the Petitioner's request for three residential lots on the subject property in accordance with Petitioner's Exhibit 1, must be denied. While the Petitioner does have sufficient acreage within the entire parcel to support three density units, the property cannot be subdivided in the manner depicted on Petitioner's Exhibit 1.

The Petitioner has the right to request a special hearing to approve a deviation from the dictates of County Council Bill No. 2-92, if in fact, a deviation is necessary. However, the case presented to this Deputy Zoning Commissioner is not an appropriate candidate which would substantiate a departure from the requirements of that legislation.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the special hearing shall be denied and the variance dismissed as moot.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of February, 1993 that the Petition for Special Hearing for a determination that three building lots are permitted within an area where a density anomaly exists, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance requesting relief from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit lot widths at the front building line of

95 feet and 95 feet in lieu of the required 100 feet each for Proposed Lots 1 and 2, be and is hereby DISMISSED as moot.

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING
Date 2/14/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 2/14/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 2/14/93
By [Signature]

ORDER RECEIVED FOR FILING
Date 2/14/93
By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

February 19, 1993

(410) 887-4386

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

Mr. John F. Moore
1316 Lafayette Avenue
Baltimore, Maryland 21207

RE: PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
W/S Westchester Avenue, 410' S of Oella Avenue
(2409 Westchester Avenue)
1st Election District - 1st Councilmanic District
John F. Moore - Petitioner
Case No. 93-213-SPHA

Dear Mr. Moore:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied and the Petition for Zoning Variance dismissed in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Henry Debaugh
2505 Westchester Avenue, Ellicott City, Md. 21043

Mr. R. Kent Adams
778 Hollow Road, Ellicott City, Md. 21043

People's Counsel

File



Petition for Special Hearing to the Zoning Commissioner of Baltimore County

for the property located at 2409 WESTCHESTER AVENUE
which is presently zoned DR-1 & DR-2

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

TO DETERMINE THAT 3 BUILDING LOTS ARE PERMITTED WITHIN AN AREA WHERE A DENSITY ANOMOLY EXISTS AS SHOWN ON THE PROVIDED SITE PLAN.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contact Person/Owner:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Telephone

Signature

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State

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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

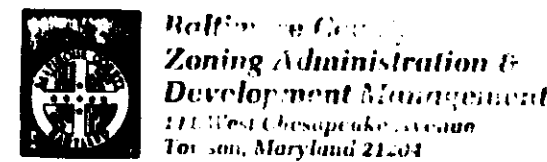
District: 10 Date of Posting: 1/12/93
Posted for: Special Hearing & Variance
Petitioner: John F. Moore
Location of property: 93-213-SPHA 4/3 111 W. Chesapeake Ave. Towson, MD 21204
Location of Sign: County Records and Records Dept. Baltimore
Remarks: _____
Posted by: [Signature] Date of return: 1/22/93
Number of Signs: 2

CERTIFICATE OF PUBLICATION

TOWSON, MD., 1/15, 1993
THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 1/14, 1993.

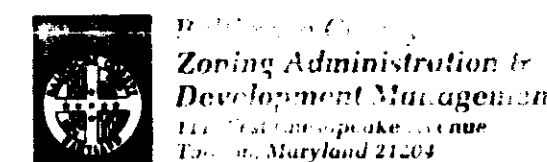
THE JEFFERSONIAN,

S. Zake Orlean
Publisher



receipt

Date: _____ Account R/O: 6150
Number: _____
Please Make Checks Payable To: Baltimore County
Casher Validation: _____



receipt

Date: 93-2-13 Account R/O: 6150
Number: 4/1-2-9
Please Make Checks Payable To: Baltimore County
Casher Validation: _____

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

DATE: 1/26/93

John F. Moore
1116 Lafayette Avenue
Baltimore, Maryland 21207

RE: CASE NUMBER: 93-213-SPHA (Item 223)
W/S Westchester Avenue, 410' S of Oella Avenue
2409-2413 Westchester Avenue
1st Election District - 1st Councilmanic
Petitioner(s): John F. Moore
HEARING: TUESDAY, FEBRUARY 9, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Dear Petitioner(s):

Please be advised that \$ 101.13 is due for advertising and posting of the above captioned property and hearing date.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING ON THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

Arnold Jablon
DIRECTOR

ARNOLD JABLON
DIRECTOR

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

JANUARY 11, 1993

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-213-SPHA (Item 223)
W/S Westchester Avenue, 410' S of Oella Avenue
2409-2413 Westchester Avenue
1st Election District - 1st Councilmanic
Petitioner(s): John F. Moore
HEARING: TUESDAY, FEBRUARY 9, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing to determine that 3 building lots are permitted within an area where a density anomaly exists. Variance to permit a lot width at front building line of 88 feet for proposed lot #1 and 95 feet for proposed lot #2 in lieu of the required 100 feet.

Arnold Jablon
DIRECTOR

ARNOLD JABLON
DIRECTOR

cc: John F. Moore
Development Engineering Consultants, Inc.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

111 West Chesapeake Avenue
Towson, MD 21204

January 26, 1993

(410) 887-3353

Mr. John F. Moore
1316 Lafayette Avenue
Baltimore, MD 21207

RE: Case No. 93-213-SPHA, Item No. 223
Petitioner: John F. Moore
Petition for Special Hearing and Variance

Dear Mr. Moore:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 29th day of December 1992.

Arnold Jablon
DIRECTOR

Received By:
W. Carl Richards Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: John F. Moore
Petitioner's Attorney:

DPW/Developers Engineering Division (Public Services) 01/19/93
Development Review Committee Response Form
Authorized signature: [Signature] Date: 1/19/93

| Project Name | File Number | Waiver Number | Zoning Issue | Meeting Date |
|--|-------------|---------------|--------------|--------------|
| William F. And Jeanette R. Clark | 221 | | | 1-11-92 |
| DED DEPRM RP STP TE | | | | NC |
| COUNT 1 | | | | |
| Tyler B. and Lorretta M. Anderson | 218 | | | 1-11-93 |
| DED DEPRM RP STP TE | | | | NC |
| Worthington Place L.P. | 219 | | | |
| DED DEPRM RP STP TE | | | | NC |
| AAI Corporation | 220 | | | |
| DED DEPRM RP STP TE | | | | NC |
| William F. and Jeanette R. Clark | 222 | | | |
| DED DEPRM RP STP TE | | | | NC |
| John F. Moore | 223 | | | |
| DED DEPRM RP STP TE | | | | NC |
| COUNT 5 | | | | |
| Stonegate at Patapsco (Azreal Property) | 90476 | | | 6-1-92 |
| ZON DED TE (Waiting for developer to submit plans first) | | | | |
| COUNT 1 | | | | |
| FINAL TOTALS | | | | |
| COUNT 7 | | | | |
| *** END OF REPORT *** | | | | |

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

DATE: January 22, 1993

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Moore Property

INFORMATION:
Item Number: 223

Petitioner: John F. Moore

Property Size: 3.10 acres

Zoning: DR 1, DR 2

Requested Action: Variance, Special Hearing

Hearing Date: 1/1

SUMMARY OF RECOMMENDATIONS:
This petitioner is requesting a special hearing to determine that 3 building lots are permitted within an area where a density anomaly exists. The petitioner is also requesting a variance to permit a lot width at front building line of 88' for lot 1 and 95' for lot 2 in lieu of the required 100'.

The Office of Planning and Zoning recommends DENIAL of the petitioner's request for the following reasons:

The Oella community was significantly downzoned during the 1992 Comprehensive Zoning Map Process. The rationale for downzoning Oella was to foster preservation of the unique topographical features of the area instead of allowing construction which may require a vast amount of grading. Downzoning hopefully will reduce the potential number of homes that could be constructed, thus helping to preserve the topographic character of Oella. The Office of Planning and Zoning's Community Planner doesn't think there are any exceptional circumstances that warrant special density considerations. Granting the petitioner's request would contract the intent of the downzoning imposed on this area during the last Zoning Map Process.

The deliberate placement of zoning lines effectively put limits on density since the adoption of the B.C.Z.R.

The proposal for two lots in the DR 2 portion of the property creates a self imposed hardship in which a variance request is necessary. Without the need for an in-fee panhandle strip the two lots would meet lot width requirements.

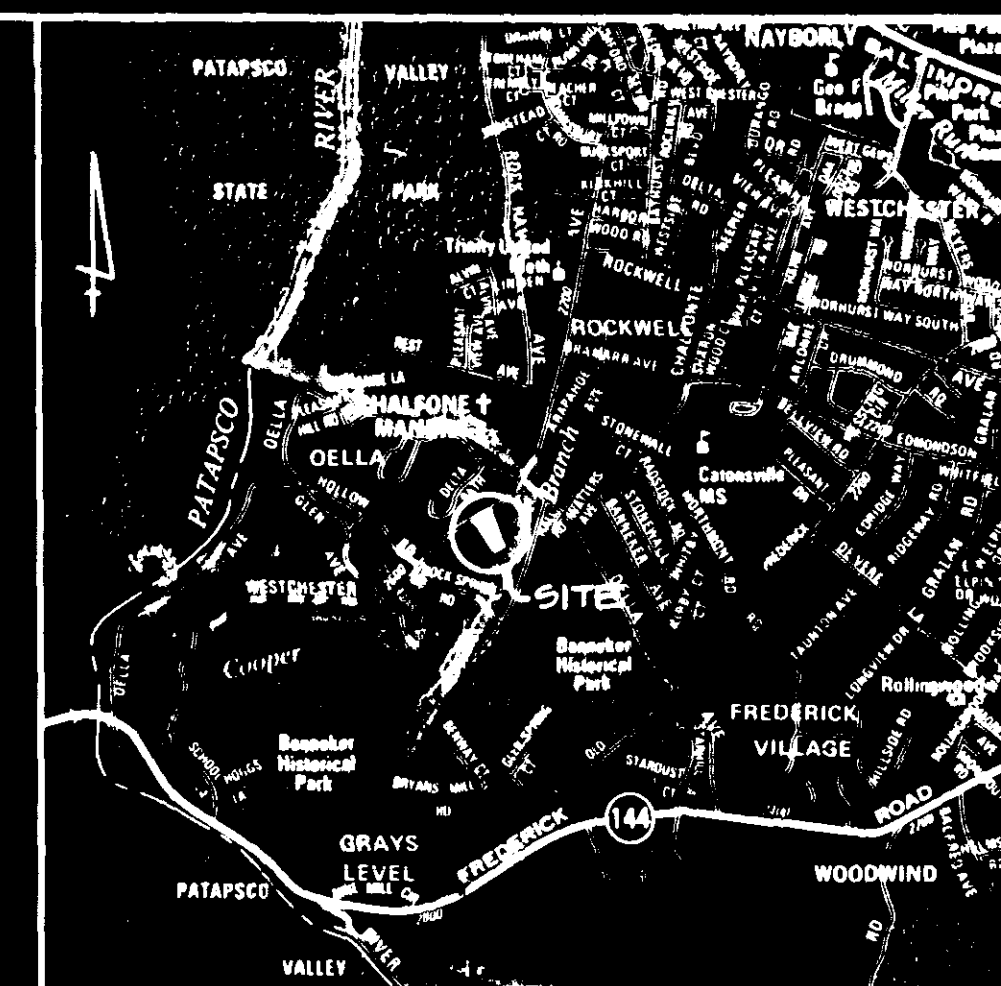
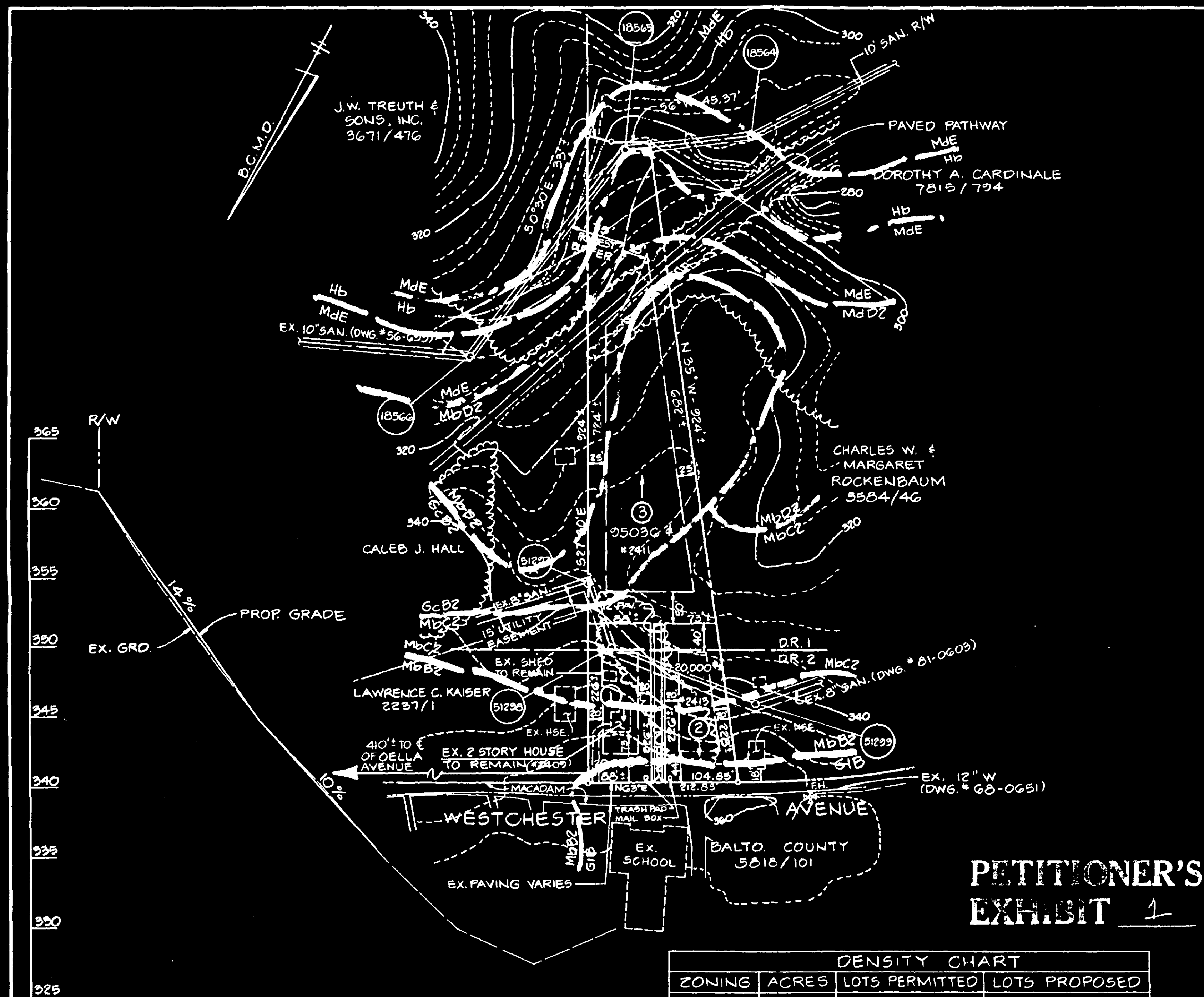
Our office thinks that if this two lot subdivision is granted it may very well set a precedent that will make future "density anomalies" difficult to deny.

Prepared by: Francis Morsey

Division Chief: [Signature]

PK/FM:rdn

223.ZAC/ZAC1



VICINITY MAP
SCALE: 1" = 1000'

GENERAL NOTES

- OWNERSHIP:
JOHN F. MOORE
1316 LAFAYETTE AVENUE
WOODLAWN, MARYLAND 21207
(410) 744-0290
- SITE:
2409 WESTCHESTER AVENUE
BALTIMORE, MARYLAND 21043

TAX ACCOUNT NO.: 0110450770
TAX MAP 100 BLOCK 9 PARCEL 853
DEED REFERENCE: 771/257
CENSUS TRACT: 4015.03
REGIONAL PLANNING DISTRICT: 223A
SCHOOL DISTRICT: HULLCHEST ELEMENTARY SCHOOL #178
NET AREA: 3.10 ACRE
GROSS AREA: 3.10 ACRE
WATERSHED: 30
SUB-WATERSHED: 77
ZONING: D.R. 1 & D.R. 2 (S.W. 3-4)
- DENSITY CALCULATION:
LOTS ALLOWED:
D.R. 1 2.22 AC. : X 1 DWELLING UNIT = 2.22 DWELLING UNITS
D.R. 2 0.88 AC. : X 2 DWELLING UNITS = 1.76 DWELLING UNITS
LOTS PROPOSED:
3 SINGLE FAMILY LOTS (INCLUDING 1 HOUSE)
- THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT.
- ANY FOREST BUFFER EASEMENTS SHOWN HEREON IS SUBJECT TO PROTECTIVE COVENANTS WHICH MAY BE FOUND IN THE LAND RECORDS OF BALTIMORE COUNTY AND WHICH RESTRICT DISTURBANCE AND THE USE OF THESE AREAS.
- THERE ARE NO UNDERGROUND FUEL TANKS ON THIS PROPERTY.
- ACCEPTANCE ON THIS PLAN IN NO WAY BINDS BALTIMORE COUNTY INTO REFUSE COLLECTION OF THIS DEVELOPMENT. AT THE TIME OF CONSTRUCTION AND AFTER ALL REQUIREMENTS (TRASH PANS) HAVE BEEN MET, A REPRESENTATIVE OF THE BUREAU WILL MEET WITH THE DEVELOPER OR HIS REPRESENTATIVE TO DISCUSS DETAILS OF REFUSE COLLECTION.
- THE PAVEMENT SHALL BE PAVED WITHIN ONE YEAR OF THE ISSUANCE OF THE FIRST OCCUPANCY PERMIT AND PRIOR TO THE ISSUANCE OF THE OCCUPANCY PERMIT OF THE LAST LOT TO BE SERVED WHICHEVER COMES FIRST.
- THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC SYSTEMS ON THIS PROPERTY.
- THIS PROPERTY AS SHOWN ON THE PLAN HAS BEEN HELD INTACT SINCE NOVEMBER 1987. THE DEVELOPER'S ENGINEER HAS CONFIRMED THAT NO PART OF THE GROSS AREA OF THIS PROPERTY AS SHOWN ON THE PLAN HAS EVER BEEN UTILIZED, DISCLOSED OR REPRESENTED AS DENSITY OR AREA TO SUPPORT ANY OFF-SITE DWELLINGS.
- PARKING: 2 PS / LOT : 6 PS. REQ'D / 6 PS. PROVIDED

PANHANDLE PROFILE - SCALE: HOR. 1" = 50' VERT. 1" = 5'

APPROVED:

DIRECTOR OF ENVIRONMENTAL DATE
PROTECTION AND RESOURCE
MANAGEMENT

| Drafting | MLV | DATE | REVISIONS |
|----------|-----|------|-----------|
| Check | SDS | | |
| Design | MLV | DATE | REVISIONS |
| Check | SDS | | |

| DENSITY CHART | | | |
|---------------|-------|-----------------|---------------|
| ZONING | ACRES | LOTS PERMITTED | LOTS PROPOSED |
| DR 1 | 2.22 | 1 x 2.22 = 2.22 | 1 |
| DR 2 | 0.88 | 2 x 0.88 = 1.76 | 2 |

93-213-SPHA

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
6603 YORK ROAD (410) 371-2600 BALTIMORE, MARYLAND 21212

OWNER / DEVELOPER
JOHN F. MOORE
1316 LAFAYETTE AVENUE
WOODLAWN, MD. 21207
(410) 744-0290

PLAT FOR
SPECIAL HEARING & VARIANCE
THE MOORE PROPERTY

2409 WESTCHESTER AVENUE
BALTIMORE, MARYLAND 21043
SCALE: 1" = 100' SHT. 1 OF 1 DATE: DEC. 18, 1992
ELECTION DISTRICT: 1C1 BALTIMORE COUNTY, MD

223 DEC. NO. 92-146